

## Article - Health - General

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§19–120.

- (a) (1) In this section the following words have the meanings indicated.
  - (2) “Consolidation” and “merger” include increases and decreases in bed capacity or services among the components of an organization that:
    - (i) Operates more than one health care facility; or
    - (ii) Operates one or more health care facilities and holds an outstanding certificate of need to construct a health care facility.
  - (3) (i) “Health care service” means any clinically related patient service.
    - (ii) “Health care service” includes a medical service.
  - (4) “Hospital capital threshold” means the lesser of:
    - (i) 25% of the hospital’s gross regulated charges for the immediately preceding year; or
    - (ii) \$50,000,000.
  - (5) “Limited service hospital” means a health care facility that:
    - (i) Is licensed as a hospital on or after January 1, 1999;
    - (ii) Changes the type or scope of health care services offered by eliminating the facility’s capability to admit or retain patients for overnight hospitalization;
    - (iii) Retains an emergency or urgent care center; and
    - (iv) Complies with the regulations adopted by the Secretary under § 19–307.1 of this title.
  - (6) “Medical service” means:
    - (i) Any of the following categories of health care services:

1. Medicine, surgery, gynecology, addictions;
2. Obstetrics;
3. Pediatrics;
4. Psychiatry;
5. Rehabilitation;
6. Chronic care;
7. Comprehensive care;
8. Extended care;
9. Intermediate care; or
10. Residential treatment; or

(ii) Any subcategory of the rehabilitation, psychiatry, comprehensive care, or intermediate care categories of health care services for which need is projected in the State health plan.

(b) The Commission may set an application fee for a certificate of need for health care facilities not assessed a user fee under this subtitle.

(c) The Commission shall adopt rules and regulations for applying for and issuing certificates of need.

(d) The Commission may adopt, after October 1, 1983, new thresholds or methods for determining the circumstances or minimum cost requirements under which a certificate of need application must be filed.

(e) (1) A person shall have a certificate of need issued by the Commission before the person develops, operates, or participates in any of the health care projects for which a certificate of need is required under this section.

(2) A certificate of need issued before January 13, 1987, may not be rendered wholly or partially invalid solely because certain conditions have been imposed, if an appeal concerning the certificate of need, challenging the power of the Commission to impose certain conditions on a certificate of need, has not been noted by an aggrieved party before January 13, 1987.

(f) Except as provided in subsection (g)(2)(iii) of this section, a certificate of need is required before a new health care facility is built, developed, or established.

(g) (1) A certificate of need is required before an existing or previously approved, but unbuilt, health care facility is moved to another site.

(2) This subsection does not apply if:

(i) The Commission adopts limits for relocations and the proposed relocation does not exceed those limits;

(ii) The relocation is the result of a partial or complete replacement of an existing hospital or related institution, as defined in § 19–301 of this title, and the relocation is to another part of the site or immediately adjacent to the site of the existing hospital or related institution;

(iii) Subject to the provisions of subsections (i) and (j) of this section, the relocation is of an existing health care facility owned or controlled by a merged asset system and is to:

1. A site within the primary service area of the health care facility to be relocated if:

A. The proposed relocation is not across county boundaries; and

B. At least 45 days prior to the proposed relocation, notice is filed with the Commission;

2. A site outside the primary service area of the health care facility to be relocated but within the primary service area of the merged asset system if:

A. At least 45 days prior to the proposed relocation, notice is filed with the Commission; and

B. The Commission in its sole discretion, and in accordance with the criteria adopted by regulation, finds that the relocation is in the public interest, is not inconsistent with the State health plan, and will result in the more efficient and effective delivery of health care services; or

3. For a limited service hospital, a site within the immediate area as defined in regulation by the Commission; or

(iv) The relocation involves moving a portion of a complement of comprehensive care beds previously approved by the Commission after January 1, 1995, for use in a proposed new related institution, as defined in § 19–301 of this title, but unbuilt on October 1, 1998, if:

1. The comprehensive care beds that were originally approved by the Commission in a prior certificate of need review were approved for use in a proposed new related institution to be located in a municipal corporation within Carroll County in which a related institution is not located;

2. The comprehensive care beds being relocated will be used to establish an additional new related institution that is located in another municipal corporation within Carroll County in which a related institution is not located;

3. The comprehensive care beds not being relocated are intended to be used to establish a related institution on the original site; and

4. Both the previously approved comprehensive care beds for use on the original site and the relocated comprehensive care beds for use on the new site will be used as components of single buildings on each site that also offer independent or assisted living residential units.

(3) Notwithstanding any other provision of this subtitle, a certificate of need is not required for a relocation described under paragraph (2)(iv) of this subsection.

(h) (1) A certificate of need is required before the bed capacity of a health care facility is changed.

(2) This subsection does not apply to any increase or decrease in bed capacity if:

(i) For a health care facility that is not a hospital, during a 2–year period the increase or decrease would not exceed the lesser of 10 percent of the total bed capacity or 10 beds;

(ii) 1. The increase or decrease would change the bed capacity for an existing medical service; and

2. A. The change would not increase total bed capacity;

B. The change is maintained for at least a 1-year period; and

C. At least 45 days prior to the change, the hospital provides written notice to the Commission describing the change and providing an updated inventory of the hospital's licensed bed complement;

(iii) 1. At least 45 days before increasing or decreasing bed capacity, written notice of intent to change bed capacity is filed with the Commission;

2. The Commission in its sole discretion finds that the proposed change:

A. Is pursuant to the consolidation or merger of two or more health care facilities, or conversion of a health care facility or part of a facility to a nonhealth-related use;

B. Is not inconsistent with the State health plan or the institution-specific plan developed by the Commission;

C. Will result in the delivery of more efficient and effective health care services; and

D. Is in the public interest; and

3. Within 45 days of receiving notice, the Commission notifies the health care facility of its finding;

(iv) The increase or decrease in bed capacity is the result of the annual licensed bed recalculation provided under § 19-307.2 of this title; or

(v) 1. The increase or decrease in bed capacity will occur in:

A. An intermediate care facility that offers residential or intensive substance-related disorder treatment services and has a current license issued by the Secretary; or

B. An existing general hospice program that has a current license issued by the Secretary; and

2. At least 45 days before increasing or decreasing bed capacity, written notice of the intent to change bed capacity is filed with the Commission.

(i) (1) Except as provided in paragraph (2) of this subsection, for a hospital located in a county with three or more hospitals, a certificate of need is not required before the bed capacity is increased or decreased if the change:

(i) Occurs on or after July 1, 2000;

(ii) Is between hospitals in a merged asset system located within the same health service area;

(iii) Does not involve comprehensive or extended care beds; and

(iv) Does not occur earlier than 45 days after a notice of intent to reallocate bed capacity is filed with the Commission.

(2) A hospital may not create a new health care service through the relocation of beds from one county to another county pursuant to this subsection.

(j) (1) A certificate of need is required before the type or scope of any health care service is changed if the health care service:

(i) Is offered:

1. By a health care facility;

2. In space that is leased from a health care facility; or

3. In space that is on land leased from a health care facility; or

(ii) Results in a change in operating room capacity in a hospital, a freestanding medical facility, or an ambulatory surgical facility.

(2) This subsection does not apply if:

(i) The Commission adopts limits for changes in health care services and the proposed change would not exceed those limits;

(ii) The proposed change and the annual operating revenue that would result from the addition is entirely associated with the use of medical equipment;

(iii) The proposed change would establish, increase, or decrease a health care service and the change would not result in the:

1. Establishment of a new medical service or elimination of an existing medical service;

2. Establishment of a cardiac surgery, organ transplant surgery, or burn or neonatal intensive health care service;

3. Except as provided in § 19–120.1 of this subtitle, establishment of percutaneous coronary intervention services;

4. Establishment of a home health program, hospice program, or freestanding ambulatory surgical center or facility; or

5. Expansion of a comprehensive care, extended care, intermediate care, residential treatment, psychiatry, or rehabilitation medical service, except for an expansion related to an increase in total bed capacity in accordance with subsection (h)(2)(i) of this section; or

(iv) 1. At least 45 days before increasing or decreasing the volume of one or more health care services, written notice of intent to change the volume of health care services is filed with the Commission;

2. The Commission in its sole discretion finds that the proposed change:

A. Is pursuant to:

I. The consolidation or merger of two or more health care facilities;

II. The conversion of a health care facility or part of a facility to a nonhealth–related use;

III. The conversion of a hospital to a limited service hospital; or

IV. The conversion of a licensed general hospital to a freestanding medical facility in accordance with subsection (o)(3) of this section;

B. Is not inconsistent with the State health plan or the institution–specific plan developed and adopted by the Commission;

C. Will result in the delivery of more efficient and effective health care services; and

D. Is in the public interest; and

3. Within 45 days of receiving notice under item 1 of this item, the Commission notifies the health care facility of its finding.

(3) Notwithstanding the provisions of paragraph (2) of this subsection, a certificate of need is required:

(i) Before an additional home health agency, branch office, or home health care service is established by an existing health care agency or facility;

(ii) Before an existing home health agency or health care facility establishes a home health agency or home health care service at a location in the service area not included under a previous certificate of need or license;

(iii) Before a transfer of ownership of any branch office of a home health agency or home health care service of an existing health care facility that separates the ownership of the branch office from the home health agency or home health care service of an existing health care facility which established the branch office; or

(iv) Before the expansion of a home health service or program by a health care facility that:

1. Established the home health service or program without a certificate of need between January 1, 1984 and July 1, 1984; and

2. During a 1-year period, the annual operating revenue of the home health service or program would be greater than \$333,000 after an annual adjustment for inflation, based on an appropriate index specified by the Commission.

(k) (1) A certificate of need is required before any of the following capital expenditures are made by or on behalf of a hospital:

(i) Any expenditure that, under generally accepted accounting principles, is not properly chargeable as an operating or maintenance expense, if:

1. The expenditure is made as part of an acquisition, improvement, or expansion, and, after adjustment for inflation as provided in the regulations of the Commission, the total expenditure, including the cost of each study, survey, design, plan, working drawing, specification, and other essential activity, is more than the hospital capital threshold;

2. The expenditure is made as part of a replacement of any plant and equipment of the hospital and is more than the hospital capital threshold after adjustment for inflation as provided in the regulations of the Commission;

3. The expenditure results in a substantial change in the bed capacity of the hospital; or

4. The expenditure results in the establishment of a new medical service in a hospital that would require a certificate of need under subsection (i) of this section; or

(ii) Any expenditure that is made to lease or, by comparable arrangement, obtain any plant or equipment for the hospital, if:

1. The expenditure is made as part of an acquisition, improvement, or expansion, and the total expenditure, including the cost of each study, survey, design, plan, working drawing, specification, and other essential activity, is more than the hospital capital threshold;

2. The expenditure is made as part of a replacement of any plant and equipment and is more than the hospital capital threshold after adjustment for inflation as provided in the regulations of the Commission;

3. The expenditure results in a substantial change in the bed capacity of the hospital; or

4. The expenditure results in the establishment of a new medical service in a hospital that would require a certificate of need under subsection (i) of this section.

(2) A certificate of need is required before any of the following capital expenditures are made by or on behalf of a health care facility other than a hospital:

(i) Any expenditure that, under generally accepted accounting principles, is not properly chargeable as an operating or maintenance expense, if:

1. The expenditure results in a substantial change in the bed capacity of the health care facility other than a hospital; or

2. The expenditure results in the establishment of a new medical service in a health care facility other than a hospital that would require a certificate of need under subsection (i) of this section; or

(ii) Any expenditure that is made to lease or, by comparable arrangement, obtain any plant or equipment for the health care facility other than a hospital, if:

1. The expenditure results in a substantial change in the bed capacity of the health care facility other than a hospital; or

2. The expenditure results in the establishment of a new medical service in a health care facility other than a hospital that would require a certificate of need under subsection (i) of this section.

(3) A certificate of need is required before any equipment or plant is donated to a health care facility, if a certificate of need would be required under paragraph (1) or (2) of this subsection for an expenditure by the health care facility to acquire the equipment or plant directly.

(4) A certificate of need is required before any equipment or plant is transferred to a health care facility at less than fair market value if a certificate of need would be required under paragraph (1) or (2) of this subsection for the transfer at fair market value.

(5) A certificate of need is required before a person acquires a health care facility if a certificate of need would be required under paragraph (1) or (2) of this subsection for the acquisition by or on behalf of the health care facility.

(6) This subsection does not apply to:

(i) Site acquisition;

(ii) Acquisition of a health care facility if, at least 30 days before making the contractual arrangement to acquire the facility, written notice of the intent to make the arrangement is filed with the Commission and the Commission does not find, within 30 days after the Commission receives notice, that the health services or bed capacity of the facility will be changed, provided that, for a merger with or acquisition of an existing general hospice, the purchaser of the general hospice may only acquire the authority to provide home-based hospice services in jurisdictions in which the seller of the general hospice is licensed to provide home-based hospice services;

(iii) Acquisition of business or office equipment that is not directly related to patient care;

(iv) Capital expenditures to the extent that they are directly related to the acquisition and installation of major medical equipment;

(v) A capital expenditure made as part of a consolidation or merger of two or more health care facilities, or conversion of a health care facility or part of a facility to a nonhealth-related use if:

1. At least 45 days before an expenditure is made, written notice of intent is filed with the Commission;

2. Within 45 days of receiving notice, the Commission in its sole discretion finds that the proposed consolidation, merger, or conversion:

A. Is not inconsistent with the State health plan or the institution-specific plan developed by the Commission as appropriate;

B. Will result in the delivery of more efficient and effective health care services; and

C. Is in the public interest; and

3. Within 45 days of receiving notice, the Commission notifies the health care facility of its finding;

(vi) A capital expenditure by a nursing home for equipment, construction, or renovation that:

1. Is not directly related to patient care; and

2. Is not directly related to any change in patient charges or other rates;

(vii) A capital expenditure by a hospital, as defined in § 19–301 of this title, for equipment, construction, or renovation that:

1. Is not directly related to patient care; and

2. Does not increase patient charges or hospital rates;

(viii) A capital expenditure by a hospital, as defined in § 19–301 of this title, for a project in excess of the hospital capital threshold and is for construction or renovation that:

1. May be related to patient care;

2. Does not require, over the entire period or schedule of debt service associated with the project, a total cumulative increase in patient charges or hospital rates of more than \$1,500,000 for the capital costs associated with the project as determined by the Commission, after consultation with the Health Services Cost Review Commission;

3. At least 45 days before the proposed expenditure is made, the hospital notifies the Commission;

4. A. Within 45 days of receipt of the relevant financial information, the Commission makes the financial determination required under item 2 of this item; or

B. The Commission has not made the financial determination required under item 2 of this item within 60 days of the receipt of the relevant financial information; and

5. The relevant financial information to be submitted by the hospital is defined in regulations adopted by the Commission, after consultation with the Health Services Cost Review Commission;

(ix) A plant donated to a hospital, as defined in § 19–301 of this title, that does not require a cumulative increase in patient charges or hospital rates of more than \$1,500,000 for capital costs associated with the donated plant as determined by the Commission, after consultation with the Health Services Cost Review Commission, if:

1. At least 45 days before the proposed donation is made, the hospital notifies the Commission;

2. A. Within 45 days of receipt of the relevant financial information, the Commission makes the financial determination required under this item (ix) of this paragraph; or

B. The Commission has not made the financial determination required under this item (ix) of this paragraph within 60 days of the receipt of the relevant financial information; and

3. The relevant financial information to be submitted by the hospital is defined in regulations adopted by the Commission after consultation with the Health Services Cost Review Commission; or

(x) A capital expenditure made as part of a conversion of a licensed general hospital to a freestanding medical facility in accordance with subsection (o)(3) of this section.

(7) Paragraph (6)(vi), (vii), (viii), (ix), and (x) of this subsection may not be construed to permit a facility to offer a new health care service for which a certificate of need is otherwise required.

(l) (1) A certificate of need is not required to close any health care facility or part of a health care facility if at least 90 days before the closing or if at least 45 days before the partial closing of the health care facility, including a State hospital, a person proposing to close all or part of the health care facility files notice of the proposed closing or partial closing with the Commission.

(2) A hospital shall hold a public informational hearing in the county where the hospital is located if the hospital:

(i) Files a notice of the proposed closing of the hospital with the Commission;

(ii) Requests an exemption from the Commission under subsection (o)(3) of this section to convert to a freestanding medical facility; or

(iii) Is located in a county with fewer than three hospitals and files a notice of the partial closing of the hospital with the Commission.

(3) The Commission may require a health care facility other than a hospital described in paragraph (2) of this subsection that files notice of its proposed closing or partial closing to hold a public informational hearing in the county where the health care facility is located.

(4) A public informational hearing required under paragraph (2) or (3) of this subsection shall be held by the health care facility, in consultation with the Commission, within 30 days after:

(i) The health care facility files with the Commission a notice of its proposed closing or partial closing; or

(ii) The hospital files with the Commission a notice of intent to convert to a freestanding medical facility.

(5) (i) The Commission shall establish by regulation requirements for a public informational hearing required under paragraph (2) or (3) of this subsection.

(ii) For a hospital proposing to close, partially close, or convert to a freestanding medical facility, the regulations shall require the hospital to address:

1. The reasons for the closure, partial closure, or conversion;

2. The plan for transitioning acute care services previously provided by the hospital to residents of the hospital service area;

3. The plan for addressing the health care needs of the residents of the hospital service area;

4. The plan for retraining and placing displaced employees;

5. The plan for the hospital's physical plant and site; and

6. The proposed timeline for the closure, partial closure, or conversion to a freestanding medical facility.

(6) Within 10 working days after a public informational hearing held by a hospital under this subsection, the hospital shall provide a written summary of the hearing to:

(i) The Governor;

(ii) The Secretary;

(iii) The governing body of the county in which the hospital is located;

(iv) The local health department and the local board of health or similar body for the county in which the hospital is located;

(v) The Commission; and

(vi) Subject to § 2–1257 of the State Government Article, the Senate Finance Committee, the House Health and Government Operations Committee, and the members of the General Assembly who represent the district in which the hospital is located.

(m) (1) Notwithstanding any other provision of this section, the Commission shall consider the special needs and circumstances of a county where a medical service, as defined in this section, does not exist; and

(2) The Commission shall consider and may approve under this subsection a certificate of need application to establish, build, operate, or participate in a health care project to provide a new medical service in a county if the Commission, in its sole discretion, finds that:

(i) The proposed medical service does not exist in the county that the project would be located;

(ii) The proposed medical service is necessary to meet the health care needs of the residents of that county;

(iii) The proposed medical service would have a positive impact on the existing health care system;

(iv) The proposed medical service would result in the delivery of more efficient and effective health care services to the residents of that county; and

(v) The application meets any other standards or regulations established by the Commission to approve applications under this subsection.

(n) The Commission may not issue a certificate of need or a determination with respect to an acquisition that authorizes a general hospice to provide home-based hospice services on a statewide basis.

(o) (1) Except as provided in paragraphs (2) and (3) of this subsection, a person shall have a certificate of need issued by the Commission before a person establishes or operates a freestanding medical facility.

(2) A certificate of need is not required for the establishment or operation of a freestanding medical facility pilot project established under § 19-3A-07 of this title.

(3) (i) A certificate of need is not required to establish or operate a freestanding medical facility if:

1. The freestanding medical facility is established as the result of the conversion of a licensed general hospital;

2. Through the conversion, the licensed general hospital will eliminate the capability of the hospital to admit or retain patients for overnight hospitalization, except for observation stays;

3. Except as provided in subparagraph (ii) of this paragraph, the freestanding medical facility will remain on the site of, or on a site adjacent to, the licensed general hospital;

4. At least 60 days before the conversion, written notice of intent to convert the licensed general hospital to a freestanding medical facility is filed with the Commission;

5. The Commission in its sole discretion finds that the conversion:

A. Is consistent with the State health plan;

B. Will result in the delivery of more efficient and effective health care services;

C. Will maintain adequate and appropriate delivery of emergency care within the statewide emergency medical services system as determined by the State Emergency Medical Services Board; and

D. Is in the public interest; and

6. Within 60 days after receiving notice under item 4 of this subparagraph, the Commission notifies the licensed general hospital of the Commission's findings.

(ii) The Commission may approve a site for a freestanding medical facility that is not on the site of, or on a site adjacent to, the licensed general hospital if:

1. The licensed general hospital is:

A. The only hospital in the county; or

B. One of two hospitals in the county that are part of the same merged asset system, and are the only two hospitals in the county; and

2. The site is within a 5-mile radius and in the primary service area of the licensed general hospital.

(iii) Notwithstanding subparagraph (i) of this paragraph, a licensed general hospital located in Kent County may not convert to a freestanding medical facility in accordance with subparagraph (i) of this paragraph before July 1, 2020.

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